UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

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UMB BANK, N.A., as Trustee, :

: No. 15 Civ. 08724(GBD)

Plaintiff, :

vs. :

:

SANOFI, :

Defendant. :

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** HIGHLY CONFIDENTIAL **

VIDEO DEPOSITION OF CHRISTOPHER VIEHBACHER

Wednesday, August 29, 2018

WEIL, GOTSHAL & MANGES LLP

100 Federal Street

Boston, Massachusetts

Reported by: Deanna J. Dean, RDR, CRR

Job No: 146793

basis.

Q. Do you know what material nonpublic information is?

A. I do.

Q. You know that it's illegal to buy and sell securities based on material nonpublic information?

A. I do.

Q. Am I correct that prior to your association with Gurnet Point Capital, you spent approximately 20 years at GlaxoSmithKline, ending up as head of their US pharma?

A. That's correct.

Q. And then in approximately 2008, you became chief executive officer of Sanofi?

A. That's correct.

Q. And you remained Sanofi's chief executive officer from 2008 until October 29, 2014?

A. That's correct.

[redacted]

entire obligation of the company, so the CVR and the debt in total.

Q. And if the credit ratings went down, would that, all other things being equal, have a negative effect on the borrowing costs of Sanofi?

A. Not necessarily. Actually, I think if you lose a notch, as the terms are used, it doesn't necessarily have a material impact. So it would depend on exactly what the impact of the credit rating is.

Q. Were you a principal negotiator of the CVR agreement?

A. Yes. I was heavily involved personally.

Q. Were there others who you would credit as having been heavily involved in the negotiations of the CVR agreement?

A. A lot of the detail of the negotiations was done banker to banker and lawyer to lawyer. In addition, my chief financial officer and my general counsel and I would meet daily, basically to discuss where we were with the project of the acquisition in

Q. Let me show you what has already been marked as Plaintiff's Exhibit 106.

A. Thank you.

Q. I'll represent to you, sir, that it is the contingent value rights agreement by and between Sanofi and the American Stock Transfer and Trust Company, the initial trustee, dated as of March 30, 2011, sir.

A. All right.

Q. During your employment with Sanofi, did you ever read this CVR agreement cover to cover?

A. I can't recall. I probably did.

Q. Did you ever read a summary of the agreement?

A. We had numerous summaries that we presented, for example, to our own board of directors and to outside investors, yes.

Q. Okay. And did you read them?

A. I did.

Q. When most recently have you reviewed the CVR agreement?

A. I can't recall. Not for years.

Q. So it was not one of the documents

forecasts. So -- and that would lead you to a probability of whether you were going to pay out a CVR or not.

Q. Okay. And do you recall, boiling it down, whether Sanofi thought at the time the deal was approved that any of the CVR milestones would be achieved?

A. Yes. As I recall, at least in my personal opinion at the time, that we ascribed very high probability to the approval milestone and a high probability to the first sales milestone of $400 million. Our own sales forecasts peaked at around -- they certainly peaked at less than the 1.8 billion, which was I think the next sales milestone.

So we saw the higher sales milestones as being less than probable, and really from the time we did due diligence, I felt that the milestone for manufacturing would not be made because the -- we believed that the forecasts that management had made on the basis of manufacturing quantities were way overoptimistic.

MR. GILMAN: Mr. Neuwirth, may we

CVRs?

A. Yes.

Q. And you had a role in that?

A. I was involved and I would have approved the acquisition of shares -- of CVRs, yes.

Q. Okay. And in November of 2011, what caused you to decide to go into the market and buy up CVRs?

A. It was our view that the CVR value as traded on the stock exchange was lower than our expected net present value of what we thought the CVR was worth. So we decided to buy up CVRs at what we deemed to be a lower price than what they were worth. That would have indicated that we had a higher expectation of Lemtrada sales than the market.

Q. Okay. And looking at the second document which begins with the page numbered 473, do you see there that as of January 3, 2012, Sanofi authorized Morgan Stanley again to buy up CVRs?

Again, with an expiration of the time frame here, February 8, 2012, but again

A. Yes.

Q. And you authorized that?

A. I did.

Q. And you authorized that because you thought that the CVRs were worth more than what Sanofi was paying?

A. Yes. That turned out to be wrong, but that's what I thought at the time.

MR. GILMAN: I'd like the reporter to mark as Exhibit 537 a document produced by Sanofi bearing production numbers SAN-CVR013055821 through 822.

John, may we have a stipulation that Plaintiff's Exhibit 536 is authentic --

MR. NEUWIRTH: Yes.

MR. GILMAN: -- and a document of a regularly conducted business activity?

MR. NEUWIRTH: And yes.

MR. GILMAN: Thank you.

(Plaintiff Exhibit 537 marked for identification.)

BY MR. GILMAN:

Q. Sir, let me explain to you what you have in your hand as Exhibit 537. It is a

[redacted]

Q. Sir, you mentioned how efficacious Lemtrada is with certain populations. Are you aware that with respect to the remitting relapsing form of MS, that certain patients treated with Lemtrada have gone five years without any MS symptoms?

A. I am aware. I have met some of those patients.

Q. And that's as close to a cure as anyone wants to use the C word?

A. It is. It's actually one of the main reasons I was so positive about Lemtrada.

A. I'm afraid I don't recall who any of these people are or what this is dealing with.

MR. GILMAN: John, could you put in front of the witness Plaintiff's Exhibit 106, the CVR agreement.

Thank you.

Q. Sir, could you turn to page 43. And do you see section 7.10 on the bottom of page 43 and which reads, "Milestones. The company shall use diligent efforts to achieve the approval milestone and the product sales milestones and shall use commercially reasonable efforts to achieve the production milestone on a timely basis"?

A. I see that.

Q. And I read that correctly?

A. Yes.

Q. The company is Sanofi?

A. Yes.

Q. Did you have any role in the negotiation of this provision?

A. There were some discussions around that and I did have some involvement with this.

Q. Okay. Do you agree, when it says

Q. All right. Now, you've gone through what "diligent efforts" means. You've gone through the specific items that it shall include.

Did you ever issue any written instructions to the Sanofi workforce as to what Sanofi's obligations of diligent efforts were under the CVR agreement?

A. Personally? I don't recall. I don't think I did.

Q. Did you ever hold a meeting where you gave a speech on that subject?

A. Me, personally? No.

Q. Did you ever issue written instructions to the workforce on what they needed to do to honor Sanofi's obligations under the CVR agreement to use diligent efforts?

A. No, I don't think that was my role.

Q. Okay. Did you ever issue oral instructions to anybody as to what had to be done to honor the obligations under the CVR agreement to use diligent efforts?

A. I wouldn't call them instructions,

but, obviously, this was a strategically important product for Sanofi and we wanted to make sure we had -- as was Aubagio. And, you know, really building the multiple sclerosis franchise within Genzyme was a core part of really utilizing what I perceived were Genzyme's real skill in selling specialty medicine. You know, you had to have a high degree of technical competence, credibility with physicians, and I had seen Genzyme do that with rare diseases and felt that they could do that with MS. So if you think about the whole -- the acquisition, the idea was to be able to use Genzyme also as a platform for launching specialty products.

So this was a, you know, pretty visible, pretty important part of the growth strategy of the company. So, yes. I mean, diligent efforts, I mean, we clearly wanted to make sure that this product was going to be a success, as was Aubagio. And I have to say, when I look at the sales, they have been.

Q. Did you ever direct that copies of the CVR agreement be distributed within Sanofi?

A. I did not personally direct that.

Q. Did you ever direct that a summary of any aspect of the CVR agreement be distributed within Sanofi?

A. I did not direct that.

Q. Did you ever put any committee or any individual or any group in charge or responsible for monitoring Sanofi's compliance with its diligent efforts obligation?

A. That was part of our -- we have a whole compliance department, yes. There, you have the whole legal department and the compliance department look at that.

For us, though, you know, what diligent efforts is defined at is exactly what anyone who is a professional in this industry would do. And so, in my view, as long as we were doing what anyone with experience in launching products would do, that we were in compliance. And that was -- it was in our financial interest to do so. If that had not been the case, we had plenty of opportunity for people to flag that this wasn't going on. I mean, there are always marketing reviews and

All I can answer you, sir, is that it looks like we achieved the objectives we set out for ourselves, and therefore the resources and the approach were appropriate.

Q. Did you believe that Sanofi was under some timetable to achieve results with Lemtrada?

A. We had quarterly results, sir. We had to make sure that those results came in as quickly as they could.

Q. And that's what governed your conduct?

A. We were measured quarterly on our results, so, yes, we had to have a sense of urgency in everything we did.

Q. Did you think the CVR agreement gave you an extra sense of urgency?

A. No. The CVR agreement, again, as I will tell you, when you negotiate those -- and I was personally involved with that -- I think I once said publicly that if we had to make the last milestone payment, I would bring the check personally to the former CEO of Genzyme with a bottle of his favorite wine. Because if we

let's count real sales, so once you've got a certain run rate and once you've got reimbursement, which we accepted. It's not an unusual request.

Q. And that would be to avoid missing out on a payment because of a technicality? You want a real effort?

A. Well, no --

MR. NEUWIRTH: Objection to the form.

Go ahead.

A. Not -- no, I don't think so. You know, if you launch, for instance, in December, you know, it's Christmas time in most countries. And if you launch in September, most physicians are busy doing other things. Most patients are doing other things. And you could have reimbursement, but you're probably not going to sell very much because you're not really having much impact out there. Or you could launch, you have reimbursement, but there's a delay in getting the product all the way through. You know, this is -- if you think about it, each one of these vials, if I

remember, was worth, you know, 4 or $5,000. So these aren't sitting on the shelf of your local pharmacy. You have to have a special distribution channel to make sure that when patients come in that the product was available since they wouldn't otherwise be there.

So they just wanted to make sure that, you know, when we actually got a launch that we weren't launching in one of these funny -- or -- not that we would do it. It's just -- it's not really representative of what the sales were going to do. So in this case, if you launched in December and there's not many physicians to go see, then, you know, you'd actually start in January and say, okay, you've kind of got the pipeline, the distribution channel filled. You've got your reps out there and running. And then, you know, how do you define that -- you know, they said 200 scripts. I think we didn't actually end up taking that. But, you know, there was the principle of making sure it was, you know, a really representative quarter, if you like.

Q. Okay.

R&D. More cost reduction. Decrease of fixed cost. Wish to hear more about RD.

Do you see those references?

A. I do. That's the second email. Correct? Yeah.

Q. And, sir, does that refresh your recollection that the investors that Sanofi was meeting with in the spring of 2011 with respect to the Genzyme acquisition were urging more cost cutting at Sanofi?

A. Well, I see, first of all, a lot of questions around revised guidance, more cost cutting, medium growth outlook. So are you going to cut more cost does not sound like a demand for more cost cutting, if I may say.

Second is this is in March of 2011, so it's just immediately after the announcement of the Genzyme deal, at which we had promised, I believe, $700 million of cost synergies to come out of the -- out of the company.

So they would have been asking about those kind of cost synergies. But I don't see anything that's particularly different than anytime in my tenure as CEO.

Q. And in bullet -- in point three, he states, "Where we're going. Now could be a turning point for Genzyme in multiple sclerosis. Launch of Lemtrada in the US is a make-or-break moment for Genzyme. The whole world of Genzyme multiple sclerosis will be looking to Lemtrada US. A rare opportunity with blockbuster potential. Hurdle: It doesn't sell itself. Opportunity: We can determine its success."

Have I read that correctly?

A. You have.

Q. Blockbuster potential. Is "blockbuster" a word common in the pharma community for a certain level of sales?

A. It is.

Q. And what level of sales does it refer to?

A. A billion.

Q. A billion a year?

A. A billion a year.

Q. So Mr. Sibold is saying that Lemtrada has the potential to be a blockbuster, billion a year in annual sales, and that the

business. There was a renal care division, there was a biosurgery division, and there was an autologous cell business for making cartilage patches for knees. And we felt that those businesses would be better off in Sanofi and that would include the production.

However, because production leadership was focused on fixing the problems at Cerezyme -- for Cerezyme and Fabrazyme, we felt that we shouldn't undertake any integration activities within the production division because that could risk distraction on fixing the Fabrazyme and Cerezyme issues.

MR. NEUWIRTH: Thank you. I have nothing else.

MR. GILMAN: That's it.

THE VIDEOGRAPHER: We are off the record at 4:08 p.m.

(Witness excused and deposition concluded at 4:08 p.m.)